

the Environmental Protection Agency, that the use of such substances—

- (i) would not be harmful to human health or the environment;
- (ii) is necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products; and
- (iii) is consistent with organic farming and handling;

(B) the substance—

(i) is used in production and contains an active synthetic ingredient in the following categories: copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals; livestock parasiticides and medicines and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers; or

(ii) is used in production and contains synthetic inert ingredients that are not classified by the Administrator of the Environmental Protection Agency as inerts of toxicological concern; and

(C) the specific exemption is developed using the procedures described in subsection (d) of this section.

## **(2) Prohibition on the use of specific natural substances**

The National List may prohibit the use of specific natural substances in an organic farming or handling operation that are otherwise allowed under this chapter only if—

(A) the Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances—

- (i) would be harmful to human health or the environment; and
- (ii) is inconsistent with organic farming or handling, and the purposes of this chapter; and

(B) the specific prohibition is developed using the procedures specified in subsection (d) of this section.

## **(d) Procedure for establishing National List**

### **(1) In general**

The National List established by the Secretary shall be based upon a proposed national list or proposed amendments to the National List developed by the National Organic Standards Board.

### **(2) No additions**

The Secretary may not include exemptions for the use of specific synthetic substances in the National List other than those exemptions contained in the Proposed National List or Proposed Amendments to the National List.

### **(3) Prohibited substances**

In no instance shall the National List include any substance, the presence of which in food has been prohibited by Federal regulatory action.

## **(4) Notice and comment**

Before establishing the National List or before making any amendments to the National List, the Secretary shall publish the Proposed National List or any Proposed Amendments to the National List in the Federal Register and seek public comment on such proposals. The Secretary shall include in such Notice any changes to such proposed list or amendments recommended by the Secretary.

## **(5) Publication of National List**

After evaluating all comments received concerning the Proposed National List or Proposed Amendments to the National List, the Secretary shall publish the final National List in the Federal Register, along with a discussion of comments received.

## **(6) Expedited petitions for commercially unavailable organic agricultural products constituting less than 5 percent of an organic processed product**

The Secretary may develop emergency procedures for designating agricultural products that are commercially unavailable in organic form for placement on the National List for a period of time not to exceed 12 months.

## **(e) Sunset provision**

No exemption or prohibition contained in the National List shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition.

(Pub. L. 101-624, title XXI, §2118, Nov. 28, 1990, 104 Stat. 3946; Pub. L. 102-237, title X, §1001(6), Dec. 13, 1991, 105 Stat. 1893; Pub. L. 109-97, title VII, §797(b), Nov. 10, 2005, 119 Stat. 2165.)

### **AMENDMENTS**

2005—Subsec. (c)(1). Pub. L. 109-97, §797(b)(1)(A), inserted “in organic production and handling operations” after “substances” in heading.

Subsec. (c)(1)(B)(iii). Pub. L. 109-97, §797(b)(1)(B), (C), struck out cl. (iii) which read as follows: “is used in handling and is non-synthetic but is not organically produced; and”.

Subsec. (d)(6). Pub. L. 109-97, §797(b)(2), added par. (6).

1991—Subsec. (c)(1)(B)(i). Pub. L. 102-237 substituted “parasiticides” for “paraciticides”.

## **§ 6518. National Organic Standards Board**

### **(a) In general**

The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act) (hereafter referred to in this section as the “Board”) to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this chapter.

### **(b) Composition of Board**

The Board shall be composed of 15 members, of which—

- (1) four shall be individuals who own or operate an organic farming operation;
- (2) two shall be individuals who own or operate an organic handling operation;

(3) one shall be an individual who owns or operates a retail establishment with significant trade in organic products;

(4) three shall be individuals with expertise in areas of environmental protection and resource conservation;

(5) three shall be individuals who represent public interest or consumer interest groups;

(6) one shall be an individual with expertise in the fields of toxicology, ecology, or biochemistry; and

(7) one shall be an individual who is a certifying agent as identified under section 6515 of this title.

**(c) Appointment**

Not later than 180 days after November 28, 1990, the Secretary shall appoint the members of the Board under paragraph (1) through (6) of subsection (b) of this section (and under subsection (b)(7) of this section at an appropriate date after the certification of individuals as certifying agents under section 6515 of this title) from nominations received from organic certifying organizations, States, and other interested persons and organizations.

**(d) Term**

A member of the Board shall serve for a term of 5 years, except that the Secretary shall appoint the original members of the Board for staggered terms. A member cannot serve consecutive terms unless such member served an original term that was less than 5 years.

**(e) Meetings**

The Secretary shall convene a meeting of the Board not later than 60 days after the appointment of its members and shall convene subsequent meetings on a periodic basis.

**(f) Compensation and expenses**

A member of the Board shall serve without compensation. While away from their homes or regular places of business on the business of the Board, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5 for persons employed intermittently in the Government service.

**(g) Chairperson**

The Board shall select a Chairperson for the Board.

**(h) Quorum**

A majority of the members of the Board shall constitute a quorum for the purpose of conducting business.

**(i) Decisive votes**

Two-thirds of the votes cast at a meeting of the Board at which a quorum is present shall be decisive of any motion.

**(j) Other terms and conditions**

The Secretary shall authorize the Board to hire a staff director and shall detail staff of the Department of Agriculture or allow for the hiring of staff and may, subject to necessary appropriations, pay necessary expenses incurred by such Board in carrying out the provisions of this chapter, as determined appropriate by the Secretary.

**(k) Responsibilities of Board**

**(1) In general**

The Board shall provide recommendations to the Secretary regarding the implementation of this chapter.

**(2) National List**

The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 6517 of this title.

**(3) Technical advisory panels**

The Board shall convene technical advisory panels to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.

**(4) Special review of botanical pesticides**

The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticide should be included in the list of prohibited natural substances.

**(5) Product residue testing**

The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.

**(6) Emergency spray programs**

The Board shall advise the Secretary concerning rules for exemptions from specific requirements of this chapter (except the provisions of section 6511 of this title) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

**(l) Requirements**

In establishing the proposed National List or proposed amendments to the National List, the Board shall—

(1) review available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and such other sources as appropriate, concerning the potential for adverse human and environmental effects of substances considered for inclusion in the proposed National List;

(2) work with manufacturers of substances considered for inclusion in the proposed National List to obtain a complete list of ingredients and determine whether such substances contain inert materials that are synthetically produced; and

(3) submit to the Secretary, along with the proposed National List or any proposed amendments to such list, the results of the Board's evaluation and the evaluation of the technical advisory panel of all substances considered for inclusion in the National List.

**(m) Evaluation**

In evaluating substances considered for inclusion in the proposed National List or proposed